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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,502	11/30/2001	Eric P. Plourde	769-303	6555

7590

04/03/2003

Gerald Levy, Esq.  
PETNEY, HARDIN, KIPP & SZUCH LLP  
711 Third Avenue  
New York, NY 10017-4059

EXAMINER
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JACKSON, ANDRE L

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 04/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/998,502

Applicant(s)

PLOURDE ET AL.

Examiner

Andre' L. Jackson

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,217,215 to Tomic. Tomic (Fig. 7) discloses a closure mechanism (570) comprising a first inter-lockable profile (571) having a longitudinally extending web portion and having a longitudinally extending locking portion, the locking portion of the first profile having a plurality of continuous shaped ribs (574, 575, 576) extending there-along, the ribs having a central tip and barbs extending laterally at each side of the tip with the barbs providing a first interlocking contact area. A second inter-lockable profile (572) having a longitudinally extending web portion and having a longitudinally extending locking portion, the locking portion of the second profile having a plurality of continuous shaped ribs (578, 579) extending there-along with at least one of the ribs having a central tip and a pair of barbs extending laterally at each side of the tip and the ribs with a central tip of the second profile bordered by at least two of the ribs (577, 580) shaped with a distal end with one and only one barb extending laterally from the distal end and extending laterally to at least one of the ribs having a central tip with the barbs providing a second inter-locking contact area. A first plurality of continuous grooves (U-shaped or bowl-shaped recess areas) there-between the ribs of the second profile, the first plurality of continuous grooves receptive in at least one inter-locking relationship to the locking portion of the first profile.

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Tomic fails to disclose that the second inter-lockable profile has one and only one of the ribs having a central tip and a pair of barbs extending laterally at each side of the tip. Instead, Tomic includes two such ribs (578, 579). However, in column 8, lines 16-19, Tomic disclose that the first and second inter-lockable profiles can be constructed to have any number of ribs. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to modify the closure mechanism of Tomic to reduce the number of ribs from two to one for the purpose of reducing material and thus overall cost of manufacture. Furthermore, applicant has not stated that the choice of just one rib solves any relevant problem or is for a particular purpose and the closure mechanism of Tomic operates equally as well.

#### **Response to Applicant's Arguments**

Applicant's arguments filed in Amendment A on January 28, 2003 has been considered but are found not to be persuasive. Applicant argues on page 4 of the above amendment that the prior art of record (Tomic) does not disclose or suggest the limitations of applicant's invention as amended. In particular, Tomic does not disclose or suggest the use of one rib of a corresponding inter-lockable profile having a pair of barbs extending laterally from a central tip thereof and the single or one rib is bordered by two ribs having only one barb extending from a distal end thereof.

Tomic discloses a similar arrangement to applicant's invention except Tomic constructs his closure mechanism with two ribs having a pair of barbs extending laterally from a central tip thereof and the two ribs are bordered by two additional ribs having just one barb extending from a distal end thereof.

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Here, the Examiner believes that the additional structure of Tomic does not germane to patentability of applicant's invention. In fact, in applicant's specification, page 3, lines 7-24, applicant states that the male and female interlocking profiles can have any number of ribs, which can be modified into various shapes.

Further, it has been held that omission of an element with the consequent loss of its function is an indication of obviousness. *In re Wilson et al* 153 USPQ 740.

Therefore, Tomic's closure mechanism, although it has more structure (more than one barb) than recited in applicant's claims, can be of obviousness modification to meet the limitations and the scope of applicant's invention. Accordingly, claims 1-4 remain rejected over Tomic.

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action.

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In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andre' L. Jackson whose telephone number is (703) 605-4276.


The examiner can normally be reached on Mon. - Fri. (9 am - 5 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (703) 306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1018.

André L. Jackson  
Patent Examiner  
AU 3677

ALJ  
March 25, 2003

  
J. J. SWANN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600